TITLE: An Action Relating to an Emergency for the Navajo Nation; Establishing the Navajo Nation COVID-19 response donation fund to house financial donations made to the Navajo Nation to assist in the fight against COVID-19 on the Navajo Nation; Replenishing the CMA-06-20 supplemental appropriation to the COVID-19 emergency funds program; Waiving Navajo Nation Code set-aside provisions

Date posted: April 10, 2020 at 12:46pm

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DATE: April 10, 2020

TITLE OF RESOLUTION: RELATING TO AN EMERGENCY FOR THE NAVAJO NATION; ESTABLISHING THE NAVAJO NATION COVID-19 RESPONSE DONATION FUND TO HOUSE FINANCIAL DONATIONS MADE TO THE NAVAJO NATION TO ASSIST IN THE FIGHT AGAINST COVID-19 ON THE NAVAJO NATION; REPLENISHING THE CMA-06-20 SUPPLEMENTAL APPROPRIATION TO THE COVID-19 EMERGENCY FUNDS PROGRAM; WAIVING NAVAJO NATION CODE SET-ASIDE PROVISIONS

PURPOSE: This resolution, if approved, will establish the COVID-19 Relief Donation Fund to house financial donations made to the Nation for its COVID-19 response efforts.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0084-20

AN ACTION

RELATING TO AN EMERGENCY FOR THE NAVAJO NATION;

ESTABLISHING THE NAVAJO NATION COVID-19 RESPONSE DONATION

FUND TO HOUSE FINANCIAL DONATIONS MADE TO THE NAVAJO

NATION TO ASSIST IN THE FIGHT AGAINST COVID-19 ON THE NAVAJO

NATION; REPLENISHING THE CMA-06-20 SUPPLEMENTAL

APPROPRIATION TO THE COVID-19 EMERGENCY FUNDS PROGRAM;

WAIVING NAVAJO NATION CODE SET-ASIDE PROVISIONS

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).

B. The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the enumerated power to “[t]o the extent permitted by federal or Navajo Nation laws and regulations, the Committee shall appropriate, allocate, cancel, re-appropriate and review the use of the Navajo Nation funds received including but not limited to all grants, contracts, gifts and other funds from all sources.” 2 N.N.C. § 301 (B)(3).
C. The Budget and Finance Committee also has the enumerated power "[t]o approve Fund Management Plans pursuant to the recommendations of the appropriate oversight committee and affected Division or Branch." 2 N.N.C. § 301 (B)(14).

D. The Navajo Nation Appropriations Act states that "[f]unds received in excess of the initial or current revenue projection shall be deposited into the General Fund unless otherwise designated by the Navajo Nation Council." 12 N.N.C. § 820 (K).

E. Pursuant to 2 N.N.C. § 164 (A)(16):

"Matters constituting an emergency shall be limited to the cessation of law enforcement services, disaster relief services, fire protection services or other direct services required as an entitlement under the Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council." 2 N.N.C. §164 (A) (16).

F. Ensuring the health and safety of all residents and employees within the Navajo Nation is an inherent attribute of sovereignty.

SECTION TWO. FINDINGS

A. COVID-19 is a dangerous and extremely contagious respiratory virus. The virus is pandemic and has reached the Navajo Nation. COVID-19 is spreading at an alarming rate within the Navajo Nation; as of April 9, 2020, the Navajo Nation has reported 488 cases of COVID-19 and 20 related deaths.


C. The Navajo Nation Commission on Emergency Management, with the concurrence of the President and Vice President of the Navajo Nation, on March 11, 2020 declared a Public Health State of Emergency due to the outbreak of COVID-19 in areas surrounding the Navajo Nation. Acknowledging the establishment of the Health
Command Center by the Navajo Nation Department of Health, the Commission stated, “Locally, it is acknowledged and understood that the threat of COVID-19 needs to be mitigated to reduce risk of exposure to the Navajo People and the resultant consequential public health impacts.” CEM-20-03-11, attached as Exhibit A.

D. On March 18, 2020, the Navajo Office of Environmental Health and Protection Program within the Navajo Nation Department of Health issued a Public Health Order declaring the outbreak of COVID-19 within the Navajo Nation; the order limited mass gatherings. See Exhibit B.

E. On March 20, 2020, Public Health Emergency Order No. 2020-003 was issued, ordering all individuals living on the Navajo Nation to stay home (Shelter in Place). See Exhibit C. The same order prohibits visitors to the Navajo Nation, and requires the closure of all businesses on the Navajo Nation except “essential businesses.”

F. On March 29, 2020, Public Health Emergency Order No. 2020-004 was issued implementing a curfew from 8:00 p.m. to 5:00 a.m. on all Navajo Nation residents. The Shelter in Place order of March 20, 2020 was also indefinitely extended. Exhibit D.

G. On March 6, 2020, the Governor of the State of Utah declared a State of Emergency due to the outbreak of coronavirus (COVID 19). Exhibit E.

H. On March 11, 2020, the Governor of the State of Arizona issued a Declaration of Emergency due to the outbreak of coronavirus (COVID 19). Exhibit F.

I. On March 11, 2020, the Governor of the State of New Mexico declared a state of Public Health Emergency due to the outbreak of coronavirus (COVID 19); the Public Health Emergency was renewed and expanded on April 6, 2020. Exhibit G.

J. On March 20, 2020, the Navajo Nation Council approved Resolution No. CMA-06-20, attached as Exhibit H, awarding the Department of Health four million dollars ($4,000,000) from the Undesignated Unreserved Fund Balance to respond to the COVID-19 pandemic on the Navajo Nation. The President signed CMA-06-20 into law on the same day.

K. After the Public Health State of Emergency was declared on the Navajo Nation, the Health Command Center started receiving financial and property donations from
individuals, businesses, non-profits, agencies, and enterprises to support the Nation’s COVID-19 response efforts.

I. To ensure that the Navajo Nation could promptly apply the donated funds and property to the COVID-19 response efforts, on March 20, 2020, the Navajo Nation Council approved Resolution No. CMA-08-20, attached as Exhibit I, minimizing the procedures for accepting donations during the COVID-19 emergency declaration. The President signed CMA-08-20 into law on March 26, 2020.

M. When the Nation accepts a donation, it also accepts the obligation to expend or use the donation for the purposes for which it was donated. The Navajo Nation Office of the Attorney General was recently designated to lead the “Donations Branch” within the Navajo Nation Health Command Operations Center and charged with maintaining the integrity of the COVID-19 response donation process.

N. To ensure that all financial donations received for the COVID-19 response efforts are expended only for COVID-19 response related efforts and can be accounted for and audited, the Navajo Nation finds it in the best interests of the Navajo Nation to establish the COVID-19 Response Donation Fund within the Navajo Department of Health.

SECTION THREE. ESTABLISHING THE COVID-19 RESPONSE DONATION FUND

A. The Navajo Nation hereby establishes the COVID-19 Response Donation Fund within the Navajo Nation Department of Health.

B. The Navajo Nation Council hereby designates that all financial donations, from any source and in any amount, received by the Nation for its COVID-19 relief efforts shall be deposited in the COVID-19 Response Donation Fund.

C. The COVID-19 Response Donation Fund shall only be expended for COVID-19 relief efforts, including, but not limited to preparedness, emergency response, and recovery, that mitigate the harmful effects of the pandemic virus as prioritized by the Navajo Department of Health and the replenishment of supplemental appropriation funding to the COVID-19 Emergency Funds Program.
D. Provisions of the Budget Instruction Manual that impede the expeditious expenditure of funds for their intended purpose, i.e., COVID-19 relief efforts, shall not apply to the COVID-19 Response Donation Fund.

E. COVID-19 Response Donation Fund funds shall not lapse pursuant to 12 N.N.C. § 820 (N).

F. The COVID-19 Response Donation Fund shall expire when all donations have been expended.

SECTION FOUR. WAIVING NAVAJO NATION CODE SET-ASIDE PROVISIONS

The Navajo Nation waives any and all provisions of the Navajo Nation Code that would extract a set-aside from financial donations made to the Nation for its COVID-19 relief efforts, including but not limited to the provisions in the Navajo Nation Permanent Fund, 12 N.N.C. §§901 et seq.; Navajo Nation Veterans Trust Fund, 12 N.N.C. §§ 1171 et seq.; Capital Outlay Match Funding Special Revenue Fund, 12 N.N.C. §§2001 et seq.; Navajo Nation Water Rights Claim Fund, 12 N.N.C. §§ 2101 et seq.; Diné Higher Education Grant Fund, 12 N.N.C. §§2301 et seq.; and Land Acquisition Fund, 16 N.N.C. §§201 et seq..

SECTION FIVE. ADMINISTRATION AND MANAGEMENT OF THE COVID-19 RESPONSE DONATION FUND

A. The COVID-19 Donation Fund shall be managed and administered pursuant to a Fund Management Plan (FMP) developed by the Navajo Department of Health, with the assistance of the Office of the Controller, and recommended by the Health Education and Human Services Committee and approved by the Budget and Finance Committee.

B. The COVID-19 Donation Fund FMP shall, at a minimum, include the following provisions:

1. The first four million dollars ($4,000,000) of donations shall be used to replenish the $4,000,000 supplemental appropriation made from the Undesignated Unreserved Fund Balance pursuant to CMA-06-20.

2. After the $4,000,000 is returned to the Undesignated Unreserved Fund Balance, expenditures shall only be for COVID-19 relief efforts, including, but not
limited to preparedness, emergency response, and recovery, that mitigate the
harmful effects of the pandemic virus as prioritized by the Navajo Department
of Health; such expenditures shall be made through an Executive Branch
budgeting and approval process.

3. The Office of the Attorney General and Office of the Controller shall report
donations received to the Naabik’iyáti’ Committee at the end of each Fiscal
Year Quarter; and shall report any individual financial donation exceeding one
hundred thousand dollars ($100,000) to the Speaker of the Navajo Nation
within ten (10) days of receiving the donation.

4. The Office of the Controller shall provide the Naabik’iyáti’ Committee notice
when the Undesignated Unreserved Fund Balance has been replenished for the
CMA-06-20 $4,000,000 supplemental appropriation.

5. The Department of Health shall report all COVID-19 Response Donation Fund
expenditures to the Naabik’iyáti’ Committee at the end of each Fiscal Year
Quarter.

SECTION SIX. AUDIT REQUIREMENTS

In addition to audit by the Nation’s independent auditors as part of the annual audit, the
COVID-19 Response Donation Fund shall be audited each year by the Office of the
Auditor General.

SECTION FIVE. EFFECTIVE DATE

This Action shall become effective in accord with 2 N.N.C. § 221(B).